



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF ENVIRONMENTAL QUALITY

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Secretary of Natural Resources

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David K. Paylor  
Director

Dallas R. Sizemore  
Regional Director

### STATE AIR POLLUTION CONTROL BOARD ENFORCEMENT ACTION – ORDER BY CONSENT ISSUED TO

#### A&G COAL CORPORATION Registration No. 11561

#### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1 – 1309, - 1316, between the State Air Pollution Control Board and A&G Corporation, regarding A&G Coal Corporation for the purpose of resolving certain violations of the Virginia Air Pollution Control Law, the Permit and the Regulations for the Control and Abatement of Air Pollution.

#### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “A&G Coal Corporation” means A&G Coal Corporation, a corporation authorized to do business in Virginia and its affiliates, partners, subsidiaries, and parents. A&G Coal Corporation is a ‘person’ within the meaning of Va. Code § 10.1 – 1300.
2. “Board” means the State Air Pollution Control Board, a permanent citizens’ board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and - 1301.
3. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.

4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1 – 1185.
5. "Facility" means A&G Coal Corporation, located at Route 58-A in Appalachia, Wise County, Virginia, which is permitted to operate a portable screening unit.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1 – 1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "Permit" means the New Source Review Permit to construct and operate a portable screening unit which was issued under the Virginia Air Pollution Control Law and the Regulations to A&G Coal Corporation on September 28 2007.
9. "Regulations" mean the Regulations for the Control and Abatement of Air Pollution, means 9 VAC 5 chapters 10 through 80.
10. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Facts and Conclusions of Law**

1. A&G Coal Corporation owns and operates the Facility in Wise County, Virginia. The Facility is a portable screening unit.
2. The Facility is subject of the Permit which allows the company to operate a portable screening unit.
3. On Thursday, August 25, 2009, Department staff conducted a Full Compliance Evaluation of the Facility for compliance with the requirements of the Virginia Air Pollution Control Law, the Permit, and the Regulations. Based on the inspection, Department staff made the following observation:
  - a) Failure to submit information and apply for relocation of portable screen unit prior to movement of unit. The Extec Turbo Trac unit had been moved to the home base (Paragon Loadout) on July 21, 2009.

4. Condition 23 of the Permit states, "The permittee is authorized to apply for relocation of the Extec Turbo Trac portable screen (TT1) to other project sites within Virginia under the provisions of 9 VAC 5-80-1320 A. Such requests will be evaluated on a case-by-case basis. The portable screening plant shall not be relocated to a project site in Virginia without prior written approval of the Department.  
(9 VAC 5-170-160 and 9 VAC 5-80-1320 A)"
5. Condition 24 of the Permit states, "At least fifteen days prior to each relocation, the following information shall be submitted to the reviewing DEQ Regional Office:
  - a. The facility registration number;
  - b. The date of the permit;
  - c. Date of estimated relocation and start-up date of the facility;
  - d. The period of time the facility will be at the proposed site;
  - e. The location and description of the proposed site;
  - f. The location of the present site, and If the present site is outside of the Commonwealth of Virginia, include the most recent location in Virginia;
  - g. A description of the facility to be relocated, including any identification number the owner uses to identify the facility;
  - h. A description of the operation at the site, including the type of product and the total throughput at the proposed site;
  - i. The process throughput which has occurred at the present site, if the site is located inside the Commonwealth of Virginia; and
  - j. The process throughput for the last 12 consecutive months.  
(9 VAC 5-170-160)"
6. On September 22, 2009, based on the inspection, the Department issued a Notice of Violation No. 9-7-SWRO-2009 to A&G Corporation for the alleged violations described in paragraphs C(3) through C(5), above.
7. On October 2, 2009, A&G Coal Corporation contacted DEQ staff by electronic response regarding the NOV.

8. On October 5, 2009, DEQ staff received a facsimile relocation notification stating the relocation date for the Extec Turbo Trac portable screen was July 25, 2009.
9. Based on the August 25, 2009 site inspection and the documentation submitted on October 5, 2009, the Board concludes that A&G Coal Corporation has violated Permit Condition 23 and 24 as described in paragraphs C3 through C5 above.
10. A&G Coal Corporation has submitted documentation that verifies that the violations described in paragraphs C3 through C5 above, have been corrected.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and – 1316, the Board orders A&G Coal Corporation and A&G Coal Corporation agrees to pay a civil charge of \$2,160.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia", delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

A&G Coal Corporation shall include its Federal Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of A&G Coal Corporation for good cause shown by A&G Coal Corporation, or on its own motion pursuant to the Administrative Process Act Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order

3. For purposes of this Order and subsequent actions with respect to this Order only, A&G Coal Corporation admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. A&G Coal Corporation consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. A&G Coal Corporation declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board or Director to modify, rewrite, amend, or enforce this Order.
6. Failure by A&G Coal Corporation to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. A&G Coal Corporation shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. A&G Coal Corporation shall show that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. A&G Coal Corporation shall notify DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. the reasons for the delay or noncompliance;
  - b. the projected duration of such delay or noncompliance;
  - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
  - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition listed above, which A&G Coal Corporation intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and A&G Coal Corporation. Nevertheless, A&G Coal Corporation agrees to be bound by any compliance date, which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. A&G Coal Corporation petitions the Director or his designee to terminate the order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order, or
  - b. the Director or the Board terminates the Order in his or its sole discretion upon 30 days written notice to A&G Coal Corporation.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve A&G Coal Corporation from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

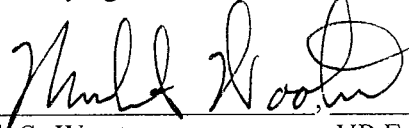
12. Any plans, reports, schedules or specifications attached hereto or submitted by A&G Coal Corporation and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of A&G Coal Corporation certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind A&G Coal Corporation to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of A&G Coal Corporation.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.

15. By its signature below, A&G Coal Corporation voluntarily agrees to the issuance of this Order.

And it is ORDERED this 11th day of January, <sup>2010</sup>~~2009~~ *DK*

*Dallas R. Sizemore*  
Dallas Sizemore, Regional Director  
Department of Environmental Quality

A&G Coal Corporation voluntarily agrees to the issuance of this Order.

Date: 1-7-10 By:   
Mark S. Wooten, VP Engineering,  
A&G Coal Corporation

Commonwealth of Virginia

City/County of Wise

The foregoing document was signed and acknowledged before me this 7<sup>th</sup> day of  
January, ~~2009~~<sup>2010</sup> by Mark S. Wooten who is  
V.P. Engineering of A&G Coal Corporation, on  
behalf of the corporation.

  
Notary Public

175486  
Registration No.

My commission expires: 11-30-2010

Notary Seal: